

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
April 11, 2006 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Charles Falwell, Board member, presided. No other Board members were present

Jennifer Kazzie and Ilona LaPaglia appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case
Lic = Licensing Application
RF = Recovery Fund Claim
Trades = Tradesmen Disciplinary Case/Application

C = Complainant/Claimant
A = Applicant
R = Respondent/Regulant
W = Witness
Atty = Attorney

Participants

- | | |
|---|---|
| 1 Holloway Construction, Inc t/a Lisa & Company File Number 2006-03831 (Lic) (NO DECISION MADE) | Allen Holloway – A Lisa Holloway – W |
| 2 Allen Holloway & Stephen Monaghan t/a H & M Contractors File Number 2006-03832 (Disc) (NO DECISION MADE) | Allen Holloway – R Lisa Holloway – W |
| 3. Wayne John Dell t/a W J Dell Construction File Number 2005-04961 (Disc) (CONSENT ORDER) | Dell – R Marion Cake – W Ted Chewing – W |
| 4. Mallicott & Associates Inc. File Number 2005-03822 (Disc) (NO DECISION MADE) | Patton Mallicott – R Alvin Archibald – C Patricia Culley-Anderson – C |
| 5 David L Hill & Daniel W Reynolds t/a Economy Home Maintenance File Number 2005-03938 (Disc) (NO DECISION MADE) | None |

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Wayne John Dell, t/a W J Dell Construction
Louisa, VA 23093

File Number 2005-04961
License Number 2705012618

CONSENT ORDER

Respondent Wayne John Dell, t/a W J Dell Construction ("Wayne John Dell") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

Board's 2003 Regulations provides:

18 VAC 50-22-200. Remedial education, revocation or suspension; fines.

The board may require remedial education, revoke or suspend a license or fine a licensee when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.

Pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended.

On March 6, 2006, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Wayne John Dell ("Dell"), t/a W J Dell Construction, to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On April 11, 2006, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation

The following individuals participated at the IFF: Wayne John Dell, Respondent, Marion Cake ("Cake") and Ted Chewning ("Chewning"), on behalf of ElderHomes Corporation ("Elder"), Witnesses; Jennifer Kazzie, Staff Member; and Charles Falwell, Presiding Board Member.

During the IFF, Chewning stated that Elder is a not-for-profit organization that hires contractors to perform work for qualified homeowners, and pays them through a grant received from a Department of Housing and Urban Development ("HUD") program. Elder has worked with Dell for approximately fourteen (14) years. Elder acted as an agent for Dell on this project, and drafted the contract used by Dell in the transaction. Chewning stated that the failure to put Dell's correct trade name and required provisions in the contract was Elder's fault. Elder provided a copy of the revised contract form that it now uses. Although Elder drafted the contract, Dell signed the contract on behalf of his firm, and accepted responsibility for the improper contract.

The Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

The Board and Wayne John Dell, as evidenced by the signatures affixed below, enter into this Consent Order. Wayne John Dell knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

By signing this Consent Order, Wayne John Dell acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Report of Findings. Wayne John Dell consents to the following term(s):

| | | | |
|--|--------------------------|----------------------|--------|
| | Count 1 | 18 VAC 50-22-230.A | \$0.00 |
| | Count 2 | 18 VAC 50-22-260 B 9 | \$0.00 |
| | | | ----- |
| | TOTAL MONETARY PENALTIES | | \$0.00 |

Wayne John Dell also agrees to pay \$150.00 in Board costs.

Any monetary penalties, costs, and/or sanctions are to be paid/performed within thirty days of the effective date of this consent order unless otherwise specifically noted above. Wayne John Dell acknowledges any monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Wayne John Dell will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Wayne John Dell acknowledges that failure to pay any monetary penalty or cost and/or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Wayne John Dell's license until such time as there is compliance with all terms of this Order. Wayne John Dell understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019

and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

Wayne John Dell
t/a W J Dell Construction

Date

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this ____ day of _____,
2006

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this ____ day of _____, 2006.

Board for Contractors

BY: _____
Jay W. DeBoer, Secretary

EOO

**VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917**

REPORT OF FINDINGS

| | |
|------------------------|--|
| BOARD. | Board for Contractors |
| DATE. | November 28, 2005 (revised March 6, 2006) |
| FILE NUMBER. | 2005-04961 |
| RESPONDENT. | Wayne John Dell, t/a W J Dell Construction |
| LICENSE NUMBER. | 2705012618 |
| EXPIRATION: | October 31, 2006 |
| SUBMITTED BY. | Investigator Jennifer Counts |
| APPROVED BY. | Assistant Director Janet Creamer |

COMMENTS:

This file was opened to address contract issues.

Wayne John Dell ("Dell"), t/a W J Dell Construction, was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705012618).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s).

BACKGROUND

On June 13, 2005, File Number 2005-02397 was closed administratively by the Compliance and Investigations Division of the Department of Professional and Occupational Regulation. During the review of File Number 2005-02397, possible violations were discovered and a new disciplinary case was docketed against Dell. (Exh. C-1)

On April 1, 2004, Wayne Dell Construction entered into a written contract, in the amount of \$17,221.00, with Snow Ware ("Ware") to perform renovation work at 2205 Carlise Avenue, Richmond, Virginia 23231. The contract was signed by Wayne Dell on behalf of Wayne Dell Construction. The contract indicated ElderHomes Corporation ("Elder")

would pay the contractor and that Elder was designated as the owner's authorized representative in the transaction. (Exh. R-1)
Elder is a non-profit organization that is funded by the Department of Housing and Urban Development ("HUD") Elder hires contractors to perform work for homeowners who qualify and pays the contractors through HUD grant money. (Exh. I-2)

Elder paid Dell with grant money to pay him for the work performed at the subject property. (Exh. I-2)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- A. A licensee must operate under the name in which the license is issued. Any name change shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name

FACTS:

The contract indicated the name Wayne Dell Construction as the contractor. (Exh. R-1)

On October 16, 1992, Dell was issued Class B contractor's license number 2705012618. The trading name for the license is W J Dell Construction. (Exh. I-1)

Dell failed to operate in the name in which the license is issued

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

- B. The following are prohibited acts.

- 9 Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
- d A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - f. Disclosure of the cancellation rights of the parties;


- h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services;

FACTS:

The contract used by Dell in the transaction failed to contain subsections: d , f , and h.
(Exh. R-1)

The meeting adjourned at 3 00 p m.

BOARD FOR CONTRACTORS



Mark D Kinser, Chairman



Jay DeBoer, Secretary

COPY TESTE

Custodian of Records

**STATE AND LOCAL GOVERNMENT
CONFLICT OF INTEREST ACT**

**TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government**

- 1 Name: Charles Falwell
- Title: Presiding Board Member
3. Agency: Board for Contractors
4. Transaction. Informal Fact-Finding Conferences on
- 5 Nature of Personal Interest Affected by Transaction: 4-11-2006
- N/A
- 6 I declare that.
- (a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:
-
- (b) I am able to participate in this transaction fairly, objectively, and in the public interest
- [Signature] 4-11-06
- Signature Date